IN THE HIGH COURT OF JUSTICE CLAIM NO BL-2019-001045

BUSINESS & PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
B E T W E EN:

ASERTIS LIMITED

CLAIMANT

AND

(1) MARK DAMIAN CLARKSON
(2) PAGEFIELD DEVELOPMENTS LIMITED
(3) GLENN THOMAS
(4) JOHN UNSWORTH
(5) RICHARD LUXMORE
(6) COLIN HOWARD BOSWELL
(7) FORMER YORK MILL RISHTON (32) LIMITED (FORMERLY MDSC (LIVERPOOL) LIMITED)
(8) JOSHERS WHARF (UU) LIMITED (FORMERLY TAYCO 002 LIMITED)
DEFENDANTS

AND BY PART 20 CLAIM BETWEEN:

MARK DAMIAN CLARKSON

PART 20 CLAIMANT

AND

(1) ASERTIS LIMITED

(2) FUTURE RESOURCES FZE
(3) PRADEEP SINGH
(4) HOLY GROUP LIMITED
(5) SUDARSHAN SADANA
(6) GMT GLOBAL (FZE)
(7) VIJAY PAL GHANDI
(8) RAJINDER KUMAR
PART 20 DEFENDANTS

SKELETON ARGUMENT ON BEHALF OF MARK DAMIAN CLARKSON

HEARING 8 FEBRUARY 2021

Suggested pre-reading: Skeletons; Note of hearing [6]; Skeleton before Arnold J [126]; Affidavit of Davies [64]; Brew WS1 [67]; Caterall WS 1 [68]; WS1 Clarkson [69]; Caterall WS1 [68] WS3 [73] WS 4 [73] WS 6 [to be added] WS 7 [to be added] and WS 8 [to be added] (Note these should already be with the Court even if not added by Fladgate to the electronic Bundle); Brew WS 3 and 4 [50] and [51] and Brew WS 5 [127]; Judgment of HHJ Hodge QC Nov 2019 [42 p773]
Some of this will have been included in C/P20 Ds Reading List. Time 2 hrs.

Introduction

1 Firstly sincere apologies are proffered for the late service of this document. The author was provided with a 3600 page electronic bundle late Wednesday evening and then further versions of this Bundle throughout Thursday 4 February- excess 4000 pages.

2 This Skeleton is filed on behalf of MDC only; and only in respect of his applications to discharge the FO granted on 4 June 2019 [1A/5]; and to adjourn the other applications made by the Claimant (now Asertis) and the other Part 20 Defendants (together the "P20 Applications")

3 The current position is as follows (as further referred in WS Caterall 7 [being added- but already provided to Court on 04/05/2021]:

a. Neither MDC nor the other Ds can fund any representation for their opposition to the P20 Applications, absent the FO being discharged or at the very least varied;

b. As far back as 9 July 2019, MDC issued an application to discharge the FO on various grounds [1B/39]. After various adjournments, that application was ultimately listed to be heard on 3 February 2021 in this Court, but was adjourned by agreement to be listed for Directions as part of the business before this Court between 8-10 February 2021;

c. The 3 February 2021 date was so postponed because MDC had no effective choice: (a) MDC had no funds to contest the threats by Asertis to seek to move the listing to 8-10 February; (b) MDC had been able to secure limited funds to make the discharge application on 3 February, and thought he had secured funding for the P20 Applications, BUT could not secure any further

funding. Hence he reluctantly agreed to the discharge application being moved;

d. Unfortunately for all the MDC Ds, it transpired after the agreed postponement that MDC has not been able to secure the further funding for the Part 20 Applications;

e. He and the Ds have as a result no representation for those hearings, and absent discharge/variation or clarification of the FO, and an adjournment of the Part 20 Applications, Taylors, the MDC D's solicitors, will be coming off the record and ceasing to act. There is no counsel representation for the Part 20 Applications;

f. 8 February is also the Return Date of the FO- on which Asertis, now the C post assignment pursuant upon Funding Secure's administration, has to justify the continuation of it – effectively with the matter being considered afresh: see ***VTB v Antipinsky*** **[2020] EWHC 72 (Comm) Per Phillips LJ at [37].**

g. One would have thought that, in view of the judgment of HHJ Hodge QC of 8 November 2019, paragraph 17, [42/p773 and following] that C and the P20 Ds would have readily consented to MDC having recourse to the frozen assets to fund his case, but they have in fact refused and placed every impediment in the way. This continues today.

4 As developed further below, this FO should never have been granted. There were serious material non-disclosures ("MNDs") in front of Arnold J on the 4 June 2019 Hearing.

5 The C has managed to hang on to the FO for 21 Months- in which time the case has not progressed beyond service of the DCC and Part 20 Claim: pleadings have not even closed. Whilst it is true that there have been consensual continuations, that does not absolve C from expeditiously prosecuting the Claim. It has not done so.

6 Arnold J pointed out to C on 4 June 2019 that the Return Date should be one week: see [Bundle page 3458].

7 It is beyond doubt that C, and now Asertis as substitute, are abusively using the FO as a means of security, and are impeding any realistic access to the frozen Assets

for ordinary business activities, legal expenses, and even paying bone fide creditors.

8 Indeed MDC is facing a Bankruptcy Hearing in relation to an admitted debt of £150K, with the hearing on 5 February 2021: he would be able to pay that creditor were it not for the continued existence of the FO and/or Cs determination to hang on to it and refusal to agree to MDC having access to the Assets for these purposes. There can be no doubt that C and the Part 20 Ds all wish that result to occur.

9 Further C was never able to give a meaningful undertaking in damages, and in fact was insolvent (or virtually so) at that time.

10 In any event, C should have returned to Court voluntarily when it became clear that it was insolvent, as this is clearly material to whether fortification would be ordered, or the FO discharged for MND

11 The Claims against the Ds are in tort: in November 2020 C settled with the alleged main tortfeasor- Richard Luxmore. It is trite law that the settlement with one joint tortfeasor discharges all others. It is incumbent on C to demonstrate why this result has not arisen in this case- yet this is not remotely addressed. If C does not demonstrate to the contrary, then on one reading of the POC, <u>all</u> claims against all Ds have been compromised. See the exposition by Flaux J in ***The Alexandros T* [2014] EWHC 3068 paras 55-68.**

12 Finally, by way of introduction:

a. The FO application is listed for directions. One direction being sought- very much as a fall-back to the discharge/variation, is to clarify that MDC can use one of the FO Assets- the "Lytham Property" ("Lytham") as means to obtain funding for the benefit of himself and the Ds to defend the claim and prosecute the Part 20 claims, and more importantly for present purposes, to resist the Part 20 Applications;

b. The Claim as eventually revealed in the POC- which is persisted in by Asertis, does not, on examination, reveal any properly pleaded case in fraud, as (not least) the conduct alleged – all of which is based on inference, is equally consistent with innocent, or careless conduct. Further the requirements of The Chancery Guide Paragraph 10.1 and 10.2 [White Book Vol 2 page 137] have not been met.

The Part 20 Applications

13 The following is to counter any suggestion made by the P20 Ds that there is no basis for adjourning as they will inevitably be successful in their P20 Applications. In view of the history of this case there is every reason to think that, knowing that there is no effective representation in relation to these applications at present, this will be vigorously suggested.

14 The following headline points are identified, therefore, for the purposes of demonstrating that (a) there is real purpose in adjourning the P20 Applications to allow for proper representation with counsel attending; and (b) to highlight the severe injustice that will otherwise result.

15 So, put shortly, the following is in support of the adjournment application only.

16 Cutting through their prolix evidence, the C/Part 20 Ds positions is/are as follows:

a. Master Kaye's order permitting service out, should be set aside for MND- in one respect, failure to take her to the Judgment of HHJ Hodge QC in November 2019 in the Manchester Action;

b. MDC's case that there was collusion before the Settlement Agreement ("SA"), with a view to engineering an EOD so that MDC would inevitably forfeit his claim to the beneficial ownership of the structure that owned the valuable Ten Acres site, has no prospects of success as there is evidence form the two main players- Mr Kumar and Mr Ghandi, that they did not know each other before the SA, which it is said is corroborated; and in any event he has suffered no loss as the Ten Acre Site was charged to the P20 Ds, and post default it was sold for only enough to pay off that indebtedness. In other words it is asserted that is/was worth no more;

c. There is no claim under CCA 1974 s 140A as MDC was not a debtor- and hence no credit was advanced to him. Put another way, the only party able to make such a claim would be the debtor company- Ten Acres;

d. The Part 20 Claim is an impermissible attack on the November Judgment of HHJ Hodge QC, and is caught by the rule in *Henderson v Henderson.*

17 The short answer to these points are as follows:

a. Master Kaye. Permission to serve out was not in fact required. It was applied for on a pre-cautionary basis- "belt and braces" as she described it. Such applications are normally dealt with on paper: the Master convened a short WN remote hearing, at which this was explored. Her view was that no permission was required at all. The author's view was that was less certain- but that the position re the CCA 140A claim was even less clear, and in any event service by an alternative method was sought under CPR6.15. The Master made the service out order on this precautionary basis. In fact no permission was required. This was dealt with under *Brussels Recast.* See CPR 6.30, 6.31 and Notes at 6.30.5. and 6.33

b. Even if permission was required, the P20 Ds should have utilised the Acknowledgement of service form to challenge jurisdiction: see CPR 11.1. Further no challenge was made within 14 days after Acknowledgement: see CPR 11.1(4). This is fatal.

c. In any event there was no MND. The Judgment was expressly referred to in the evidence in support which the Master had read thoroughly. The failure to exhibit a copy of the judgment is not a MND. See the principles below in relation to Cs MND regarding the FO.

d. The Collusion aspects are trial territory- the volume of challenged evidence demonstrates that the P20 Ds are engaging in an impermissible mini- trial: *Swain v Hillman.* The evidence is disputed- and with contrary evidence on behalf of otherwise disinterested witnesses on behalf of the MDC Ds. See WS Green [54- ex HMRC Tax Inspector]. Please note that this evidence has been prepared under the funding constraints above referred to and so is not exhaustive.

e. No Loss. The suggestion of no loss is misconceived. MDC lost the value of his Whiteacre shares and his UBO interest. The value of the Ten Acre site is in dispute. The P20 Ds rely on the actual price obtained by the receivers. MDC's position is that it was worth far more: indeed there is a force sale valuation at £26.5M obtained for the borrowing that eventually was taken up with the P20D's. The valuation was provided for the intended original lender- Uniwell, but it eventually proceeded in the names of the P20Ds instead and

utilised the same solicitors to whom the valuation had been provided: see MDC WS 1 para 20 [Bundle Tab 69 page 1945/6].

f. November Judgment. There was no "attack"- collateral or otherwise on the November 2019 judgment, nor any *Henderson* abuse. The Judgment given did not concern all the parties herein, was given on the C's application to remove a Form UN1 from a property, in the context of an application for an adjournment, when MDC deployed draft POC including one claim only- namely that the uplift of £1M on default, in the SA, was a penalty. There was no fraud, rescission, breach of contract claims at all, and to suggest that they should have been deployed in that draft POC is unreal. In passing this judgment *is* relevant in the context of abusive use of the FO- see paragraph 17 [Tab 42 page 773 and following]

g. The CCA s 140 point taken is wrong. Credit is not limited to a D-C- i.e. Debtor Creditor relationship. Credit is defined as any financial accommodation: see CCA 1974 s9. This was clearly provided here both to Ten Acres and also MDC. MDC was the only party that would procure the means to service the loan under the SA. Further there is no doubt that s140A applied to Ten Acres, and the contrary is not suggested. MDC has the benefit of the claims/rights that Ten Acres had under the Contracts Rights of Third Parties Act 1999. He can argue that the arrangement was unfair and unenforceable as against Ten Acres. If that is right then the P20 Ds would not be able to enforce it. Hence MDC would not have lost his "UBO claim". Note that his ability to deploy this Act is recognised in the SA itself.

18 Hence the Court should be astute to reject any suggestion that somehow the P20 Ds have some sort of "Ace" or "Open Goal".

19 The Court should be similarly astute to recognise what is actually going on: Asertis/Part 20 Ds, want to hang on to the FO at all costs, knowing that if MDC is made bankrupt before the FO Return Date is effective, or discharge application heard, then it will never be scrutinised. If he is not made bankrupt, but has no representation, then "much the better" as their chances of getting rid of the P20 Claim is optimised.

20 This is lamentable, particularly when if the FO did not exist, *or* even if it had not been abused, then the MDC parties would be fully represented.

The FO discharge application

21 Paragraph 11 of the FO provides, in usual form, that any affected party van apply to discharge or vary provided that they first inform the Cs solicitors. There is no other notice requirement.

22 MDC did this as soon as the changed circumstances in respect of his inability to fund representation for the P20 Applications arose: Taylors sent a letter dated 2 February 2021 giving such notice. See WS Caterall 7 [supra]

Principles

23 The applicant has an onerous duty of full and frank disclosure on any *ex parte* application: see the summary of the applicable principles in ***Fundo Soberano de Angola v Dos Santos [2018] EWHC 2199 (Comm) at [50-53].***

24 The applicant must *"act in the utmost good faith and disclose to the court all matters which are material to be taken into account by the court in deciding whether or not to grant relief without notice, and* ***if so on what terms*** (emphasis added): ***Gee, Commercial Injunctions [9-001]***

25 The applicant and its legal advisers have a duty to make proper inquiries before making the application, and to disclose all those matters "*known to the applicant or his agents, or matters which they would have known, had they made all the inquiries which should have reasonably been made prior to the application": **Gee: [9-004]*** This is a strict duty, and involves *"asking witnesses to produce all the relevant documents which they have, so as to ensure that the court is not misled": **Gee [9-004]***

26 'Material' in this context simply means anything that is potentially relevant to the application and the relief sought. The ***Commercial Court Guide at F2.5*** provides: *"On all applications without notice it is the duty of the applicant and those representing the applicant:… (a) To make full and frank disclosure of* ***all matters relevant to the application****"* (emphasis added).

27 ***Gee, [9-001]*** states that the duty applies *"not just to disclosure of facts but to* ***absolutely anything*** *which the Judge should consider"* (emphasis added) and ***[9-***

002] provides that *"This rule applies with special force to applications for [**freezing relief]**"*.

28 The test is **not** whether the Court's decision would have been different if the matter had been disclosed. The test is simply whether the matter was potentially relevant to the Court's assessment of the application. This is an objective test, for the Court to decide: ***Gee [9-003]*** provides: *"The duty extends to placing before the Court **all matters which are relevant to the Court's assessment of the application,** and it is no answer to a complaint of non- disclosure that if the relevant matters had been placed before the Court, the decision would have been the same. **The test as to materiality is an objective one,** and it is not for the applicant or his advisors to decide the question; hence it is no excuse for the applicant subsequently to say that he was genuinely unaware, or did not believe, that the facts were relevant or important"* (emphasis added).

29 The assessment of whether there has been a material non-disclosure is carried out as at the date of the *ex parte* hearing. It is no answer to an allegation of material non-disclosure to refer to what has happened since the *ex parte* hearing or to fraise new arguments and new evidence that were not placed before the Court.

30 In ***Fundo Soberano v Dos Santos*** [2018] EWHC 2199 (Comm), the claimants had committed various material non-disclosures at the *ex parte* hearing, including as to the second defendant's role in managing a sovereign wealth fund. Several months later, in response to the defendants' application to set aside for material non-disclosure, the claimants adduced reams of new evidence on these points. Popplewell J found such evidence wholly unpersuasive; the issue was whether the claimants had fairly presented the matters at the *ex parte* hearing – not whether they had some *ex post facto* explanation for the submissions made.

31 One example was the claimants' submissions on fees. At the *ex parte* hearing, the claimants had asserted that the manner in which fees were drawn down allowed the defendants to extract unjustifiably high fees. At the *inter partes* hearing, the claimants shifted position and said that the drawdown of funds resulted in a loss of visibility and control by the claimants. Popplewell J held that this was not how the matter was presented to Mr Justice Phillips, at [76(1)]:

"In the course of the hearing before me Mr McGrath indicated that the vice in drawing down the funds and putting them in the partnership accounts was that the Claimants thereby lost visibility and control. ***But this was not how the matter was presented to Phillips J, which did not confine the criticism to this aspect****"* (emphasis added).

Similarly, in relation to the overall merits of the case as presented at the *ex parte* hearing, Popplewell J concluded that the subsequent evidence adduced by the claimants was irrelevant, at [83]:

"Proper disclosure would have put a very different complexion on the application, and ***it is no answer for the Claimants to say that the subsequent evidence*** *put before the court to deal with them raises disputes which are sufficient to surmount the merits hurdle of a good arguable case"* (emphasis added).

32. Where a party has relied on evidence at the *ex parte* hearing and later realises that that evidence is incorrect or misleading, there is an absolute duty on that party (and its legal advisors) to correct that evidence with the Court. ***Gee [9-104]*** provides:

"…if the judge has been misled even inadvertently, the applicant must correct that as soon as possible."

33. Similarly, if the applicant discovers that the basis for the relief granted no longer applies, then he is under an absolute duty to inform the Court. ***Gee [9-028]*** provides:

"Irrespective of whether the proceedings remain on an ex parte basis, there is a duty to return to the court if the basis on which it has granted relief no longer applies. This applies regardless of how long previously the relief was granted"

34. In ***Speedier Logistics v Aardvark Digital [2012] EWHC 2276 (Comm),*** Eder J held at [32]:

"It seems to me important that, in relation to freezing injunctions and injunctions generally, in circumstances where the claimant has in effect gained the benefit of the

exercise of the court's discretion on a certain basis when that basis no longer exists, it is imperative that the claimant obtains either the consent of the defendant to the continuation of the injunction or ***reverts back to the court so that the court itself can decide whether or not to continue the injunction****"* (emphasis added).

35. The Courts have repeatedly emphasised the penal consequences if a breach is found, especially in the context of freezing relief. In ***Bank Mellat v Nikpour [1985] FSR 87,*** Donaldson LJ held at 92:

"The rule requiring full disclosure seems to me to be one of the most fundamental importance, particularly in the context of the draconian remedy of the Mareva injunction. It is in effect, together with the Anton Piller order, one of the law's two 'nuclear' weapons. ***If access to such a weapon is obtained without the fullest and frankest disclosure, I have no doubt at all that it should be revoked****" (emphasis added).*

36. The Court does retain the jurisdiction to renew the injunction, but such a power should be exercised *"sparingly"*: Dar Al Arkan v Al-Sayed [2012] EWHC 3539 (Comm) *per* Andrew Smith J at [148]. Where a non-disclosure is deliberate, the Court will ensure that *"any advantage gained by the non-disclosure should not be retained"*: ABCI v BFT [1996] 1 Lloyd's Rep 485 at 490.

Delay

37. So far as delay is concerned in the present case it is extensive and not actually explained at all. Any delay in the underlying proceedings- so in prosecuting the Claim, which is not justifiable in the circumstances, results in the FO being discharged. The C is an under a struct duty to proceed as expeditiously as possible: see ***Gee [24-028 through 24-31]***.

Undertaking in Damages

38. As is well known, and as pointed out in ***Gee [11-023]*** *"If an applicant* ***may*** *not be good for damages on the undertaking,* ***this is a material fact which must be disclosed to the court on the ex-parte application."*** No further authority is needed for this position, but the foot note the above (footnote 125) is replete with illustrations. The **Commercial Court Guide** at **F.15.4 (a)** contains further requirements. It follows, that as this is a

material fact, insufficient disclosure is a MND, and if the situation worsens, the applicant is duty bound to come back to Court promptly.

Application of the principles to the present case

39. At the hearing before Arnold J the POC had not been served. The case was presented as one entirely in fraud/Tort: see Davies Affidavit [64/para 81/p 1465] and Claim Form [1]. The Judge was not told that if the sums advanced were all repaid, then there would be no loss in tort. (Even today, there is only the most fleeting reference to any contractual claim in the POC).

40. At the hearing before Arnold J there was no adequate disclosure of the full correspondence between MDC's solicitors and Funding Secure- the original C and the applicant, concerning "concerns" that, if the Cs case was correct, must have already exusted about MDC in Februray 2019. This goes to delay.

41. Further Taylors requests, pre-action, in February 2019 for redemption figures so that the borrowings borrowing could be repaid from the re-financing of Pagefield Mill were not adequately disclosed: see WS MDC [69/ 1947 and 1948/paras 23- 26]. There was no reference to the same before Arnold J [see Note of Hearing [6]. Nor the fact that there was *no* response to the redemption requests at all. This is a significant MND as it was relevant to the suggestion that MDC was a fraudster. It was also relevant to risk of dissipation. He has solicitors on the record and they were acting for him and his entities in redeeming the loans.

40. The Judge was not addressed sufficiently or at all on the adverse effect that the FO would be likely to have on his ability to pay back the loans. Indeed absent the FO there is no reason to think that the re-financing that MDC refers to at paras 27 [69/1948] would not have occurred- in which case there would have been nothing owing to the C

41. In any event, these matters- all in MDC's WS dated 6 August 2019, should have caused the C to return to Court as the basis upon which the FO was obtained – even if it earlier existed (which is denied) no longer did. This did not occur.

Date	Property	Prepared by	Valuation
19.12.17	Pagefield Mill	Beesleys	3,600,000
00.01.16	York Street/Livesey Street, Rishton	Salisbury Hamer	1,400,000
15.08.16	Joshers Wharf	Salisbury Hamer	150,000 to 200,000
00.01.17	3-3A Harwood Lane	Salisbury Hamer	450,000 to 500,000
TOTAL			**5,600,000 to 5,700,000**

42. Likewise the Judge was not informed that C was adequately secured by the charges it had. This is again significant. Whilst it was mentioned that some of the Loans were secured, there was no presentation to the Judge as to the amount and value of the security. This is a serious MND as it relates to the terms of any FO, and also the risk of dissipation. The C had the following security:

And in addition had a valuation in respect of Lytham in January 2017 [see Caterall 8- to be added] of £5,6950 – note this was actually obtained by and addressed to Funding Secure

18.05.20	Town Manor - Lytham	Armistead Barnett	4,500,000

Each of the Charges that C had were/are "all monies" charges.

43. There was no presentation of the insolvent financial position of the C to the Judge, or any proper presentation of Funding Secure's financial position at all. The picture, if any, that was painted was of a company that discovered (alleged) unaccounted for holes in its client account- which had been then been rectified before the application. Nothing was said about its overall parlous financial position, and hence the Judge was precluded from considering whether to deny relief on this basis or order fortification- as would be usual.

44. Under circumstances where C then entered into administration on 23October 2019, this was particularly relevant.

45. Further MDC adduces actual evidence from Mr. MacLean [55], indicating that Mr. Kumar reveled to him that as at 17July 2019 Funding Secure was insolvent.

46. Upon assignment of the Claim to Asertis, it has continued to hang on to the FO and will countenance no variation of it all. Asertis has the same representation as the original had.

47. Asertis and its advisors assume that the FO is a tradable asset, along with the chose in action constituted by the Claim. It regards itself as having exactly the same entitlement as C. It doesn't. It is a different entity. The FO was granted to C- based on the status of C as a distinct Claimant/Applicant. Applying the logic adopted by C/Asertis, any worthy Claimant could apply for an FO, and then assign it to an inappropriate assignee, circumventing scrutiny of the assignee. That is obviously wrong and specious. Yet that is Asertis's position.

48. In fact C should, of its own volition, restored the FO to bring to the Court's attention its own non- disclosures above, including the fact that C was secured as the charged it had were all monies charges, and the fact that MDC was seeking to redeem the whole indebtedness in February, the fact that the unsecured undertaking was inappropriate, its insolvency, the delay in the underlying proceedings, the entry into administration, the assignment to Asertis. Asertis should also have applied to the Court for the continuation of the FO, justifying the same by reference to the circumstances that existed at the assignment date, and also putting before the Court the matters just referred to as they infect the FO that Asertis was seeking to accede to and benefit from.

48. Likewise Asertis should have brought to the Court's attention the settlement with Mr. Luxmore and the consequent release of the other D's – at a minimum from those tort claims that it was said supported the granting of the FO relief, OR given full disclosure and in any event explained to the MDC Ds and the Court why there has been no such release, should that position be contended for.

As at today

49. None of the matters above referred to have been cured (which alone would not be sufficient in any event) and brought to the Court's attention by either C or Asertis.

50. In fact Asertis and C have persisted in exploiting every opportunity to prevent there being any scrutiny of the FO, and remain determined to deny MDC any access to any

of the FO Assets to raise money to pay creditors and, relevantly today, legal representation.

51. This situation is truly disgraceful. In fact Asertis (and C's attitude), which is encouraged by the P20D's is that the legal expenses carve out only applies to cash… and that as result there is no carve out permitting the use of any of the Assets, and that no transaction to effect the same that involves non-cash assets is permitted. They also ignore the fact that MDC's business is property development, and thus disposals of investment properties, and the acquisition of the same, is his business.

52. On the back of this, they also threaten contempt proceedings.

Directions

53. If the Court will not deal with the Discharge/Variation, but instead gives Directions, the Court is urged to confirm and order for the avoidance of doubt, that the Lytham Property- aka the Town Manor Property, can be disposed of or dealt with so as to permit any sale to proceed and/or used to raise finance to pay creditors and legal and living expenses.

54. The Court will appreciate that neither C nor Asertis has a charge over this property

Conclusion

55. The Court is asked to (a) deal with the Discharge/variation application, depending on the outcome, then (b) adjourn the other business before the Court to a date to be fixed, or alternatively to (a), make a direction as sought above in relation to Lytham, and then adjourn.

56. If the Court denies the above, then Taylors in addition seek to come off the record immediately.

STEPHEN COGLEY QC

4 Pump Court

TEMPLE

05/02/2021